COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 210 of 2004

The Oriental Insurance Co. Ltd.
…. **Appellant.**

Versus

Smt. Meena Daniel
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 5-4-2004 passed in M.A.C. Case No. 9 of 1999, Smt. Meena Danial & another Vs. Smt. Vinod Lata & others, by Motor Accident Claims Tribunal/ Addl. District Judge, V F.T.C. Dehradun ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.4,17,500/- as compensation along with interest @ 6% per annum, as mentioned in the impugned order, in favour of the claimants – respondents against the O.P. No. 3-appellant under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the finding of the learned Tribunal is contrary to law as the vehicle was not duly insured on the date of accident and the findings of the tribunal are not based on evidence on record.

Brief facts of the case are that Rajan Daniel (the deceased) has died in a motor accident on 15.7.1998 on account of the injuries sustained by him due to rash and negligent driving by the driver of U.H.N.-2409 at Mandola Power Greel Station, within P.S. Loni Ghaziabad. The claim petition has been field by the legal heirs/dependents of the deceased. The Opposite Parties contested the

claim petition by filing their written statement. The Opposite Party No.3-appelalnt has asserted in its written statement that the offending vehicle was not duly insured with the company, and the Insurance Policy was obtained by fraud. The premium of Policy was deposited into the Bank on 31.7.1998, while the accident has occurred on 15.7.1998, therefore, the Insurance Company is not liable to pay the compensation.

The learned Tribunal framed as many as six issues in the case. Ultimately, the lenred Tribunal has held that the accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the drive of the offending Truck. It has also been held that the Jeep driver had not contributed in the accident. It has also been held that the owner of the Jeep sustained grievous injuries in the accident. The learned Tribunal has further held that the truck driver was holding all valid papers including valid driving licence on the date of accident. The learned Tribunal has also found that from Ext. 6, it is established that the offending truck was duly insured with the Insurance Company-appellant. Ultimately, the Tribunal ha awarded compensation of Rs. 4,17,500/- in favour of the claimants along with interest @ 6% per annum as against the Oriental Insurance Company-appellant.

We have heard learned counsel for the appellant, Sri D.S.Patni, as well as learned counsel for the claimant-respondents Sri R.P.Nautiyal and have gone through the entire material on record including the impugned judgment and award.

It has been submitted by the learned counsel for the appellant that in the present case the certificate of insurance has been obtained by the owner of the vehicle in connivance with Development Officer of the appellant-Insurance Company, which shoes the date of commencement of the Insurance Policy from 12.07.1998 till 11.07.1999, but in fact the Cheque was deposited by the owner of the vehicle, i.e. respondent no.3 on 31.7.1999,

therefore, it has been argued that the vehicle cannot be held to be duly insured on the date of accident. WE are not inclined to accept the contention of the lenred counsel because it is not the case of the appellant that the Insurance Company has ever cancelled the policy in question. It was open to the appellant to have cancelled the Insurance Policy in case it was found that the premium of the policy was not at all in deposit on the date of accident. On the other hand, the Certificate of Insurance, which is Annexure-4 to the appeal, clearly goes to show that the vehicle involved in the accident was duly insured for the period 12.7.1998 to 11.7.99. The appellant has not disputed this document, but it has been submitted that this certificate was obtained by the insured, Smt. Vinod Lata, in connivance with the development Officer of the Company -appellant. In our opinion, in the facts and circumstances of the case, when the certificate of insurance of the vehicle was in existence on the date of accident, the Insurance Company is liable to pay compensation. We are supported by the Hon'ble Apex Court judgment in the case of ***"New India Assurance Company Ltd. V. Rula and Others" [(2000) 3 Supreme Court Cases, 195.*** The Hon'ble Supreme Court has inter alia held in para no. 13 of its judgment that ***"If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."*** The learned Tribunal has also dealt with the mater of connivance in the judgment and the Tribunal has rightly observed on Issue No. 4 that in case, the said document has been illegally issued by any official or officer of the Insurance Company, the claimants are not responsible for it. The appellant-Insurance Company can initiate enquiry to punish the defaulting Officer/Official.

No other point was urged or argued in this appeal.

In the result, the appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP